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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/671,179	09/25/2003	Massl E. Kiani	MASIMO.376A	7210

20995 7590 12/28/2006
KNOBBE MARTENS OLSON & BEAR LLP
2040 MAIN STREET
FOURTEENTH FLOOR
IRVINE, CA 92614

EXAMINER

BERHANU, ETSUB D

ART UNIT	PAPER NUMBER
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3768

SHORTENED STATUTORY PERIOD OF RESPONSE	NOTIFICATION DATE	DELIVERY MODE
3 MONTHS	12/28/2006	ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Notice of this Office communication was sent electronically on the above-indicated "Notification Date" and has a shortened statutory period for reply of 3 MONTHS from 12/28/2006.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

jcartee@kmob.com
eOAPilot@kmob.com

Office Action Summary

Application No.

10/671,179

Applicant(s)

KIANI ET AL.

Examiner

Etsub D. Berhanu

Art Unit

3768

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 20 November 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 2-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 18 is/are allowed.
- 6) ☒ Claim(s) 2-7, 11-17, 19 and 20 is/are rejected.
- 7) ☒ Claim(s) 8-10 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☒ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date 11/20/06.
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- ☐ Notice of Informal Patent Application
- ☐ Other: _____.

DETAILED ACTION

1. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claim Rejections - 35 USC § 102

2. Claims 2-7, 11-17, 19 and 20 are rejected under 35 U.S.C. 102(b) as being anticipated by Takeuchi et al.'039 (previously cited).

Takeuchi et al.'039 discloses a method and monitor for compensating a first physiological property using a second physiological property, the monitor comprising: a primary input in communication with a first device and responsive to a first physiological property, wherein the first physiological property comprises a blood oxygen level, a parameter input in communication with a second, non-optical device and responsive to a second physiological property, wherein the second internal property comprises pH, and a processor configured to output a compensated relationship from the primary input and parameter input using a compensation relationship comprising a calibration curve (col. 3, line 66 – col. 4, line 61 and col. 7, lines 38-58); and the method comprising: determining a relationship between the blood oxygen level, pH and a compensated measurement, reading a primary input responsive to the blood oxygen level, reading a pH parameter input, determining and altering a calibration curve based on the pH parameter input, wherein the altering comprises shifting the curve, processing the primary input and parameter input according to the compensation relationship and calibration curve, and displaying the compensated measurement (col. 6, line 62 – col. 8, line 30). Regarding claim 14, it is noted that lines 1-11 of col. 8 indicate that the step of determining a relationship further comprises determining a relationship between a first biological property (oxygen partial pressure), a second

Art Unit: 3768

biological property (pH), a compensated oxygen partial pressure measurement and a previously obtained compensated measurement (temperature).

Allowable Subject Matter

3. The following is a statement of reasons for the indication of allowable subject matter: None of the prior art teaches or suggests, either alone or in combination, a monitor for compensating a first physiological property using a second physiological property, wherein the second physiological property comprises either hematocrit, carboxyhemoglobin or methemoglobin, in combination with the other claimed elements.

4. Claims 8-10 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

5. Claim 18 is allowed.

Response to Arguments

6. Applicant's arguments filed 20 November 2006 have been fully considered but they are not persuasive. Applicant argues on page 9 of the remarks that Takeuchi et al.'039 fails to disclose a compensation relationship of a primary input, a parameter input and a compensated measurement, but as discussed in paragraph 2 above, Takeuchi et al.'039 does indeed disclose one such compensation relationship in that an oxygen partial pressure is corrected using a pH measurement. Therefore, the rejection made in the previous Office Action with regard to claims 4 and 7 are upheld.

Art Unit: 3768

Conclusion

7. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Etsub D. Berhanu whose telephone number is 571.272.6563. The examiner can normally be reached on Monday - Friday (Every other Friday off).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eleni Mantis-Mercader can be reached on (571)272-4740. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 3768

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

EDB

ERIC F. WINAKUR
PRIMARY EXAMINER

